subjects of larceny, and transfer of them transfers the debt.[15] For the purpose of taxation, they may well be regarded as tangible property, as they are freely transferable, are sold in the market, transferred as collateral, and used in various ways as property. In business practice, bonds are property, and there is no reason why they should not be tangible chattels in the eyes of the law. If the legislature should see fit to include them as proper subjects of taxation merely because of their presence within the State, one would suppose that such legislation would be within its constitutional powers. However, five out of nine justices of the United States Supreme Court, so late as April, 1914, thought that a property tax could not be levied upon commercial paper actually within a state, and owned by a non-resident,[16] though the majority of the court conceded that it was competent for a state to subject it to an inheritance tax. Any apparent conflict between this decision of the United States Supreme Court, rendered no doubt after the argument of the principal case and therefore not referred to by the court, may be easily explained. The New York Legislature whose law was questioned in the Wheeler case declared its intention to make such property subject to the inheritance tax law; the California Legislature expressed no such intention.

*M. D. S.*

CORPORATIONS: STOCKHOLDERS' LIABILITY.—The Constitution and Civil Code of California provide that "Each stockholder of a corporation . . . . shall be individually and personally liable for such proportion of all its debts and liabilities *contracted or incurred during the time he was a stockholder, as the amount of stock or shares owned by him bears to the whole of the subscribed capital stock.*"[1] This provision was an attempt to restate the original stockholder's liability clause of the Constitution of 1849, together with the interpretations thereof by the Supreme Court.[2] That clause simply provided for proportional liability and was held by the Supreme Court to require legislation to make it effective.[3] The italicised portion as quoted above was added in 1879, following the provisions of the Civil Code. This liability is a primary one and does not require action against the corporation before holding the stockholder,[4] nor is the stockholder who

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[15] Finch v. County of York, supra, n. 13; Dicey, Conflict of Laws, p. 318.

[16] Wheeler v. New York (1914), 233 U. S. 434, 34 Sup. Ct. Rep. 607.

[1] Cal. Const. art. xii, § 3; Cal. Civ. Code, § 322.

[2] Proceedings Constitutional Convention 1879, p. 382 ff.

[3] French v. Teschemaker (1864), 24 Cal. 518.

[4] Young v. Rosenbaum (1870), 39 Cal. 646; Morrow v. Superior Court (1883), 64 Cal. 383, 1 Pac. 354; Dolbear v. Foreign Mines Dev. Co. (1912), 196 Fed. 646—a case where the debt of the corporation was secured by mortgage.

pays subrogated to the creditor's rights against the corporation.[5] It has been said to be founded on contract;[6] it has also been said to be imposed by statute.[7] While under the old Constitution the stockholder's liability was satisfied by paying his proportion of the entire amount of corporate debts, as the law now stands he is liable for his proportion of each debt.[8] The right in no way interferes with the equitable right to enforce payment of subscriptions in full.[9] And in Williams v. Carver[10] it was held to exist only for the stockholders, and not to be enforceable by the state superintendent of banks when he takes over an insolvent bank.

But to what obligations of the corporation does this liability attach? If a contract is entered into, say, on January 1, 1912, to deliver goods on January 1, 1913, payment to made on delivery, and stock held by A on January 1, 1912, is transferred to B before January 1, 1913, on whom is the liability? *Coulter Dry Goods Company v. Wentworth*[11] holds that A would be the one responsible to creditors on that contract. The distinction drawn by Mr. Justice Lorigan, in department, and approved by the court in bank, between "debts" and "liabilities" is sound, as to liabilities being a broader term than debts, and it is also true that a "debt" in the common law sense does not arise until the demand is due and liquidated. A liability was, then, incurred when the contract was made, for which A would be responsible. But does this exclude B's responsibility for the "debt" contracted on January 1, 1913? The Constitution would hardly seem to make the two provisions mutually exclusive, nor does sound principle require that only one set of stockholders be liable. A may well be liable, for three years, as having been a virtual party to the contract and on whose responsibility the creditors relied. B may be held for having received the benefit of the contract, or a party to its breach, for three years from that date. This contention was, however, repudiated, by way of dictum, in an early case in this state.[12]

As an original proposition it might well be considered that the liability of stockholders "for debts or liabilities contracted or

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[5] Trindade v. Atwater etc. Co. (Cal. App., 1912), 128 Pac. 756.

[6] Kennedy v. California Sav. Bank (1892), 97 Cal. 93, 31 Pac. 846, 33 Am. St. Rep. 163.

[7] Knowles v. Sandercock (1895), 107 Cal. 629, 40 Pac. 1047; Royal Trust Co. v. MacBean (1914), 168 Cal. 642, 144 Pac. 139.

[8] Larrabee v. Baldwin (1868), 35 Cal. 155; Morrow v. Superior Court, supra, n. 4; Gardiner v. Bank of Napa (1911), 160 Cal. 577, 117 Pac. 667.

[9] Baines v. Babcock (1892), 95 Cal. 581, 27 Pac. 674, 30 Pac. 776, 29 Am. St. Rep. 158.

[10] (Jan. 4, 1916), 51 Cal. Dec. 32.

[11] (Dec. 15, 1915), 50 Cal. Dec. 608, 153 Pac. 939.

[12] Larrabee v. Baldwin, supra, n. 8.

incurred" was intended by the framers of the Constitution to mean liability for contractual and delictual obligations incurred during the time they were owners of shares in the corporation. The statute is not considered as penal, and while in derogation of the common law a fair and reasonable interpretation to effect its remedial purpose should be given. Why restrict "debts" to its narrow common law limits? Why not rather define the term in its broader or popular connotation of a contractual obligation? "Liabilities incurred" would then appear to be complementary to the first phrase, and would include all obligations arising out of tort, or other matters imposing a legal or equitable obligation on the corporation not arising out of contract. While the majority of jurisdictions hold to the technical meaning of "debts," some authorities give the term the broader meaning suggested above.[13] The result attained under this interpretation would be the same as that in the principal case, but would avoid the virtual annihilation of a portion of the section of the Constitution. The phrase "debts contracted" is restricted by the court to demands liquidated at the time of the contract. Such liquidated demands, however, would fall within the terms of "liabilities incurred" were the other phrase not present. Although a "debt" arises on delivery of goods under a previous contract, the stockholders at that time are excused, according to this decision, since a "liability" was previously incurred. It is obvious, then, that under the court's interpretation, the phrase "debts contracted" is at least superfluous.

*J. S. M., Jr.*

CORPORATIONS: STOCKHOLDERS' LIABILITY: LIMITATION OF ACTION.—Actions to enforce stockholders' liability must be brought within three years of the time the liability was created.[1] This is contrary to the ordinary provisions of statutes of limitation which run from the accrual of a cause of action, but is well established by the decisions of this state.[2] Its effect is frequently to render nugatory the liability, which at first sight appears very rigid, imposed by statute on stockholders in California corporations. The constitutionality of the code section has been repeatedly upheld, however, though in one case it was suggested, by the late Chief Justice, that the section could not be held to restrict liability to such contracts only as gave rise to a cause of action within

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[13] Carver v. Braintree Mfg. Co. (1843), 2 Story, 432, Fed. Cas. No. 2,485. See Marshall, Private Corporations, § 406; Words and Phrases, 1st series, p. 1864, ff; Morawetz, Private Corporations, 2d ed., § 880.

[1] Cal. Code Civ. Proc., § 359.

[2] Hunt v. Ward (1893), 99 Cal. 612, 34 Pac. 335, 37 Am. St. Rep. 87; Winona Wagon Co. v. Bull (1895), 108 Cal. 1, 40 Pac. 1077; Gardiner v. Royer (1914), 167 Cal. 238, 139 Pac. 75.